



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF
ENERGY WEST, INC. AND SEMSTREAM
ARIZONA PROPANE, L.L.C. FOR APPROVAL
OF THE TRANSFER OF ENERGY WEST'S
ASSETS TO SEMSTREAM.

DOCKET NO. G-20471A-06-0515
DOCKET NO. G-02696A-06-0515

DECISION NO. 69394

OPINION AND ORDER

DATE OF HEARING: January 11, 2007

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe

APPEARANCES: Mr. Michael M. Grant, GALLAGHER & KENNEDY,
P.A., on behalf of Energy West, Inc.;

Mr. Kevin D. Quigley and Mr. Jeremy Lite, QUARLES
& BRADY STREICH LANG, L.L.P., on behalf of
SemStream Arizona Propane, L.L.C.; and

Ms. Maureen Scott, Senior Staff Attorney, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

On August 11, 2006, Energy West, Inc. ("Energy West") and SemStream Arizona Propane, L.L.C. ("SemStream") (collectively, "Applicants") jointly filed with the Arizona Corporation Commission ("Commission") an application for approval of the transfer and sale of Energy West's assets to SemStream and to transfer Energy West's Certificate of Convenience and Necessity ("CC&N") to SemStream.

On September 29, 2006, Energy West and SemStream each filed direct testimony in support of the application.

On October 16, 2006, the Commission's Utilities Division Staff ("Staff") filed a letter informing Applicants that the application met the sufficiency requirements under the Commission's

1 rules.

2 On October 19, 2006, a Procedural Order was issued setting a hearing on the application and
3 setting associated procedural deadlines, including publication of notice of the application and
4 hearing.

5 On November 13, 2006, Energy West filed a notice of mailing and publication of public
6 notice of the application and hearing as required by the October 19, 2006 Procedural Order. No
7 requests for intervention were filed.

8 On December 14, 2006, Staff filed a Staff Report on the application, recommending approval
9 subject to several conditions.

10 On January 4, 2007, Applicants filed a Joint Response to the Staff Report.

11 The hearing was held as scheduled on January 11, 2007, before a duly authorized
12 Administrative Law Judge of the Commission. No members of the public appeared. Applicants and
13 Staff appeared through counsel and presented evidence. The matter was then taken under advisement
14 pending the submission of a Recommended Opinion and Order to the Commission.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. Energy West is a public service corporation certificated to provide underground
20 propane gas utility service to the public in the cities and outlying areas of Payson, Pine, and
21 Strawberry, in Gila County, Arizona, pursuant to Commission Decision Nos. 39518 (June 17, 1968)
22 and 58151 (January 13, 1993).¹ Energy West currently serves approximately 8,000 customers in
23 Arizona through a network of 170 miles of underground pipes. Energy West owns nine 30,000-
24 gallon storage tanks in the Payson area, one 30,000-gallon storage tank in Strawberry, and eighteen
25 satellite distribution systems which are located beyond the mains connected to its ten large storage
26 tanks. Energy West does not operate any propane distribution systems outside of Arizona.

27 ¹ Decision No. 39518 granted a CC&N to Broken Bow Gas Company. Decision No. 58151 approved the transfer of
28 Broken Bow Gas Company's CC&N to Great Falls Gas Company. Great Falls Gas Company changed its name in
Arizona to Energy West, Inc. in September of 1997.

1 2. SemStream is a Delaware limited liability company that has been authorized to
2 transact business in Arizona since August 7, 2006. SemStream is a wholly-owned subsidiary of
3 SemStream L.P., which is in turn a subsidiary of SemGroup L.P. of Tulsa, Oklahoma.

4 3. On August 11, 2006, Energy West and SemStream jointly filed an application for
5 approval of the transfer and sale of Energy West's assets to SemStream and to transfer Energy West's
6 CC&N to SemStream. Attached to the application was a copy of an Asset Purchase Agreement
7 executed on July 17, 2006. The Asset Purchase Agreement provides for a purchase price of \$15
8 million, to be adjusted by Energy West's working capital at transaction close.

9 4. SemStream's witness testified that the assets of its parent company SemStream L.P.,
10 and the management and staff that support those assets, would be available to SemStream after the
11 close of the proposed transaction. SemStream L.P. is one of the largest private propane terminal
12 operators in the industry and is engaged nationally in natural gas liquids supply, marketing, propane
13 terminal operations and risk management services. SemStream L.P. owns and operates 10 private
14 propane terminals with a combined throughput in excess of 300 million gallons per year and owns
15 and leases in excess of 10 million gallons of physical storage. SemStream L.P. also has access to
16 over 42 million gallons of leased storage capacity at various locations in the United States and
17 Canada, and in 2005 transported 6.8 million gallons of natural gas liquids per day, 42 percent of
18 which was propane. SemStream's witness testified that Energy West's customers can expect to
19 benefit from increased supply security as a result of SemStream's access to its parent's storage and
20 distribution resources.

21 5. Staff provided an analysis of the 2005 financial statement for SemGroup, L.P.,
22 SemStream's ultimate parent. For 2005, SemGroup, L.P. reported \$2.556 billion in current assets
23 and \$2.142 billion in current liabilities, resulting in a current ratio of approximately 1.19.

24 6. SemStream's witness testified that it plans to maintain a local presence, including
25 Energy West's Payson offices. SemStream intends to retain all of Energy West's current 21
26 employees, and to hire a new employee to fill a vacant position, such that it will retain all 22 Energy
27 West employee positions. SemStream's witness also testified that SemStream does not anticipate
28 that its pending plans to acquire the Black Mountain Gas Company's Page division will impact the

current employees of Energy West.

7. We find that SemStream has access to the resources necessary to operate the Energy West system and to supply safe, adequate and reliable service to Energy West's customers, and that it will have access to adequate financial resources to operate Energy West's propane distribution system in Arizona.

8. The Staff Report recommended approval of the proposed sale and transfer subject to the following conditions:

- 1) That SemStream retains and charges the tariff, rates and charges approved by the Commission for Energy West in Decision No. 60383 (August 29, 1997), pending conclusion of a future rate case.
- 2) That SemStream retains Energy West's Purchased Gas Adjuster ("PGA") surcharge of \$0.55 per therm, as approved in Decision No. 68814 (June 29, 2006).
- 3) That SemStream maintains a separate accounting record for its operation in Arizona and retains the related books and records at the Payson offices.
- 4) That SemStream and its parents make available to Staff their books and records, upon request during rate case or other proceedings.
- 5) That SemStream maintains Energy West's current methodology for corporate costs allocation pending further review in a rate case.
- 6) That SemStream shall not seek regulatory recovery of any costs, including an acquisition adjustment, that might arise from this transaction, in a future rate proceeding.
- 7) That Energy West assumes full liability for any gain or loss arising from the sale of its assets in Arizona as well as transfers of the related CC&N.
- 8) That SemStream assumes obligation for the balance of Energy West's customer deposits and the refundable portion of its AIAC at the close of this transaction.
- 9) That SemStream maintains an adequate level of staffing in Arizona, including qualified technical personnel, sufficient to avoid degradation of service to its customers.
- 10) That SemStream complies with all Commission rules, orders and other requirements relevant to the provision of service in Arizona.
- 11) That SemStream timely files financial and other reports required by the Commission in the proper format.

12) That SemStream Arizona adds an additional page to its monthly PGA report, listing any propane purchases made during that month from any affiliate. Also, Staff recommends that as part of SemStream's monthly PGA report, filed in March each year, that it provide a summary of the previous calendar year's propane purchases from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.

13) That SemStream continues to adhere to the Commission's Pipeline Safety Section's audit findings, requiring Energy West to be in compliance with all noted probable non-compliance issues by December 31, 2006.

14) That SemStream maintains all procedures and records needed to show compliance with all pipeline safety regulations at the Payson office.

Staff Proposed Condition Nos. 1, 3, 4, 5, 7, 8, 9, 10, 11, and 14

9. Applicants had no objection to Staff's proposed Condition Nos. 1, 3, 4, 5, 7, 8, 9, 10, 11, and 14. We find these conditions reasonable and will adopt them.

Staff Proposed Condition No. 2

10. Applicants request that Staff's proposed Condition No. 2 be qualified by including the following language: "pending any change by the Commission in a future PGA surcharge proceeding". Staff does not object to the Applicants' requested modification. Staff's proposed Condition No. 2, with Applicants' requested modification, is reasonable and will be adopted.

Staff Proposed Condition No. 12

11. Applicants request that Staff's proposed Condition No. 12 be modified to reflect that SemStream's monthly PGA report would be filed in April each year instead of March. Energy West's witness testified that because the winter storage period ends in March, this would give SemStream time to collect storage data and provide a more complete picture of the winter season. Staff does not object to the Applicants' requested modification. Staff's proposed Condition No. 12, with Applicants' requested modification, is reasonable and will be adopted.

Staff Proposed Condition No. 13

12. Applicants request that Staff's proposed Condition No. 13 be modified to delete the words "requiring Energy West to be in compliance with all noted probable non-compliance issues by December 31, 2006." Energy West's witness testified that Energy West timely made the referenced

1 filing on December 28, 2006. Staff's witness testified that Energy West is compliant with the
2 referenced audit report. With Applicants' requested modification, Staff's proposed Condition No. 13
3 is reasonable and will be adopted.

4 **Staff Proposed Condition No. 6 - Acquisition Adjustment**

5 13. SemStream's purchase price for Energy West's assets will exceed the net book value
6 of the assets.²

7 14. Staff's proposed Condition No. 6 would preclude SemStream from seeking regulatory
8 recovery in a future rate proceeding of any costs that might arise from the proposed sale and transfer,
9 including recovery of any acquisition adjustment, as a condition of approval of the application.
10 Applicants object, and request that the Commission not impose Staff's proposed Condition No. 6.
11 SemStream argues that it should not be foreclosed from the opportunity to present evidence in a
12 future proceeding of significant improved efficiencies resulting from the acquisition, because such
13 foreclosure might discourage transactions that would benefit the public. In support of its position,
14 SemStream cites our determination in a case involving the acquisition of Black Mountain Gas
15 Company by Southwest Gas Corporation (Decision No. 66101 (July 25, 2003)). In Decision No.
16 66101, we stated that the applicant would bear the burden in a future proceeding of proving clear and
17 quantifiable savings for all ratepayers directly related to the acquisition and the new owner's
18 management/operation of the system (Decision No. 66101 at 14).

19 15. Staff's witness testified that its proposed Condition No. 6 is appropriate because the
20 proposed transaction is not the result of an extraordinary circumstance compelling the transaction, but
21 is instead the result of an agreement between two willing entities. Staff believes that any costs of
22 acquisition beyond the cost of assets that would serve customers in Arizona should be borne by
23 shareholders, not ratepayers. However, Staff proposed that if the Commission defers the acquisition
24 adjustment issue until a future rate case, as Applicants urge, that the Commission caution SemStream
25 that it will require a demonstration that clear, quantifiable, and substantial net benefits to ratepayers
26 have resulted from its acquisition of Energy West's system that would not have been realized had the

27 ² Staff states that while the exact amount of net gain resulting from the proposed transaction cannot be exactly
28 determined, the proposed transaction could result in a net gain of approximately \$3.48 million before deferred taxes.
Energy West's witness testified that the net gain had been quantified in the \$3-4 million range.

1 transaction not occurred, before the Commission will consider recovery of any acquisition adjustment
2 in a future rate proceeding. Staff's witness testified that the Commission imposed a similar
3 requirement on Arizona-American Water Company in Decision No. 63584 (September 26, 2000).

4 16. We recognize that Staff's position is based on Staff's belief that it is in the public
5 interest to protect ratepayers from bearing the costs of the transaction in the absence of a showing of
6 actual and significant benefits to consumers. However, we believe the public interest requires that all
7 relevant information be available prior to making a final decision on these issues. SemStream has not
8 yet had an opportunity to operate Energy West's system. We therefore cannot yet make a final
9 determination at this time whether SemStream may be able to show clear, quantifiable and substantial
10 improvement or benefits that are significant enough to warrant rate recovery of a portion of
11 SemStream's acquisition costs. We do not want to foreclose SemStream from the opportunity to
12 present evidence of significant improved efficiencies from the acquisition. To do so might
13 discourage transactions that would benefit the public. We therefore will adopt Staff's alternative
14 recommendation regarding its proposed Condition No. 6. Our decision here does not mean that
15 ratepayers should or will bear any portion of the costs associated with this acquisition, only that when
16 the relevant information becomes available, SemStream should have an opportunity to show
17 sufficient consumer benefits directly related to the acquisition and to SemStream's management and
18 operation of Energy West's system to justify recovery of acquisition costs from ratepayers.

19 17. The Commission makes no finding at this time as to the reasonableness of
20 SemStream's future recovery of the costs of the transaction or an acquisition adjustment. SemStream
21 is cautioned, however, that Commission consideration of recovery of any acquisition adjustment in a
22 future rate proceeding will require a demonstration that clear, quantifiable, and substantial net
23 benefits to all ratepayers have resulted from SemStream's acquisition of Energy West's system, and
24 that such benefits would not have been realized had the transaction not occurred.

25 18. The following conditions on approval of the application are reasonable to protect the
26 public interest:
27
28

- 1) SemStream shall retain and charge the tariff, rates and charges approved by the Commission for Energy West in Decision No. 60383 (August 29, 1997), pending conclusion of a future rate case.
- 2) SemStream shall retain Energy West's PGA surcharge of \$0.55 per therm, as approved in Decision No. 68814 (June 29, 2006), pending any change by the Commission in a future PGA surcharge proceeding.
- 3) SemStream shall maintain a separate accounting record for its operation in Arizona and retain the related books and records at the Payson offices.
- 4) SemStream and its parents shall make available to Staff their books and records, upon request during rate case or other proceedings.
- 5) SemStream shall maintain Energy West's current methodology for corporate costs allocation pending further review in a rate case.
- 6) SemStream shall assume obligation for the balance of Energy West's customer deposits and the refundable portion of its AIAC at the close of this transaction.
- 7) SemStream shall maintain an adequate level of staffing in Arizona, including qualified technical personnel, sufficient to avoid degradation of service to its customers.
- 8) SemStream shall comply with all Commission rules, orders and other requirements relevant to the provision of service in Arizona.
- 9) SemStream shall timely file financial and other reports required by the Commission in the proper format.
- 10) SemStream shall add an additional page to its monthly PGA report, listing any propane purchases made during that month from any affiliate. As part of SemStream's monthly PGA report, filed in April each year, SemStream shall provide a summary of the previous calendar year's propane purchases from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.
- 11) SemStream shall continue to adhere to the Commission's Pipeline Safety Section's audit findings.
- 12) SemStream shall maintain all procedures and records needed to show compliance with all pipeline safety regulations at the Payson office.

19. It is also reasonable, to protect the public interest, to require Energy West to assume full liability for any gain or loss arising from the sale of its assets in Arizona as well as transfers of the related CC&N, as a condition of approval of the application.

CONCLUSIONS OF LAW

1
2 1. Energy West is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-282 and 40-285.

4 2. The Commission has jurisdiction over Energy West and SemStream and of the subject
5 matter of the application.

6 3. Notice of the application was given in accordance with the law.

7 4. There is a continuing need for underground propane gas utility service in Energy
8 West's certificated area.

9 5. In the context of a proposed transfer of assets and Certificate of Convenience and
10 Necessity, the Commission should examine all evidence available to it to determine whether or not
11 the transfer is detrimental to the public interest.

12 6. The Commission has the authority to impose conditions on a Certificate of
13 Convenience and Necessity that are required by the public convenience and necessity.

14 7. SemStream is a fit and proper entity to acquire and operate the assets of Energy West
15 and provide propane gas distribution service to Energy West's customers, and to receive a Certificate
16 of Convenience and Necessity authorizing it to provide that service.

17 8. As conditioned herein, SemStream's acquisition of Energy West's assets and the
18 transfer of Energy West's Certificate of Convenience and Necessity to SemStream is in the public
19 interest and should be approved.

20 9. The conditions set forth in Findings of Fact Nos. 18 and 19 are reasonably necessary
21 to prevent harm to the public interest and should be adopted.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the joint application of Energy West, Inc. and
24 SemStream Arizona Propane, L.L.C. for approval of the transfer and sale of Energy West, Inc.'s
25 assets to SemStream Arizona Propane, L.L.C. and to transfer Energy West, Inc.'s Certificate of
26 Convenience and Necessity to SemStream Arizona Propane, L.L.C. is hereby granted, subject to the
27 conditions set forth in Findings of Fact No. 18 and 19.

28 ...

IT IS FURTHER ORDERED that SemStream Arizona Propane, L.L.C. shall comply with each of the conditions set forth in Findings of Fact No. 18.

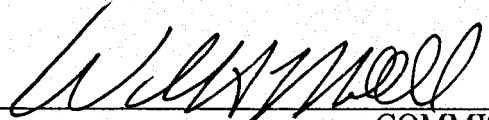
IT IS FURTHER ORDERED that Energy West, Inc. shall assume full liability for any gain or loss arising from the sale of its assets in Arizona as well as transfers of the related Certificate of Convenience and Necessity.

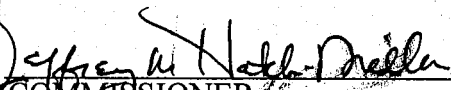
IT IS FURTHER ORDERED that the Commission will defer consideration of any acquisition adjustment or recovery of costs related to the acquisition until SemStream Arizona Propane, L.L.C.'s next rate case. SemStream Arizona Propane, L.L.C. shall have the burden of proving that clear, quantifiable and substantial net benefits for all ratepayers have resulted from the acquisition, and that such benefits would not have been realized had the transaction not occurred.

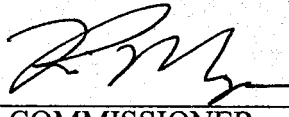
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

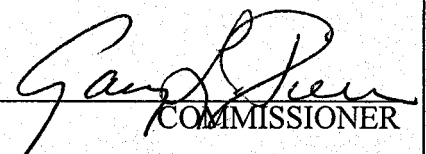
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

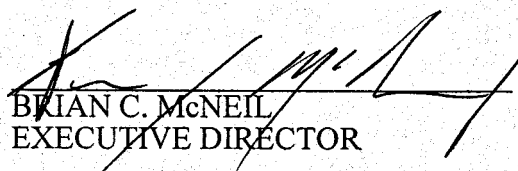

COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 22nd day of March, 2007.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

ENERGY WEST, INC. and SEMSTREAM ARIZONA
PROPANE, L.L.C.

2
3 DOCKET NOS.:

G-20471A-06-0515 and G-02696A-06-0515

4 Michael M. Grant
5 GALLAGHER & KENNEDY, PA
6 2575 E. Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Energy West, Inc.

7 Kevin D. Quigley
8 One Renaissance Square
9 Two North Central Avenue
Phoenix, Arizona 85004-2391
Attorneys for SemStream Arizona Propane, L.L.C.

10 Christopher K. Kempley, Chief Counsel
11 Maureen Scott, Senior Staff Attorney
12 Legal Division
ARIZONA CORPORATION COMMISSION
13 1200 W. Washington Street
Phoenix, Arizona 85007

14 Ernest G. Johnson, Director
15 Utilities Division
ARIZONA CORPORATION COMMISSION
16 1200 W. Washington Street
Phoenix, Arizona 85007